

Overview

1-01 INTRODUCTION

The court reporter or recorder is an integral part of the justice system; as such, she or he is subject to the requirements of court rules, statutes, and this manual. This person makes and maintains the verbatim permanent record of all proceedings. That permanent record must be a complete and accurate record. To perform this function the reporter or recorder must be competent, punctual, and willing to work long hours. Skills of a reporter or recorder include ability to report or log accurately and quickly; proficiency at transcribing; and expertise at spelling, punctuation, grammar, neatness, speed, and organization.

The reporter or recorder must be impartial, patient, dignified, and courteous and should conform personal conduct to high professional and personal standards. The reporter or recorder should be a respected citizen of good moral character and complete trustworthiness.

A. Code of Conduct

When working in the capacity of official court reporter or official court recorder, the reporter or recorder is an officer of the court and part of the court staff. He or she is subject to the same high standards of conduct above reproach, fidelity, and diligence that apply to the judge. He or she should always recognize that an independent and honorable court is indispensable to justice in our system. The judicial system is for the benefit of the litigant and the public, not the court or its staff.¹

As is stated in The State Trial Judge's Book², published under the sponsorship of the National Conference of State Trial Judges, the justice system requires that the reporter or recorder understands:

1. That the reporter or recorder of the court must reflect credit upon the court, the judge, and their profession, and that this extends to his/her personal, as well as official life.
2. That communications between the reporter or recorder and the judge are to be highly confidential.
3. That the reporter or recorder must respect the justice system at all times.
4. That the reporter or recorder should be punctual and efficient.

¹Code of Judicial Conduct, Canon 3.

²The State Trial Judge's Book, West Publishing Co., 2nd ed, pp. 11-12.

5. That the reporter or recorder should not give advice to anyone concerning any matter in the court or which could end up in court.
6. That the reporter or recorder should never purport to speak or act for the judge where judicial matters are involved.
7. That, unless specifically authorized, the reporter or recorder should never exercise the court's discretion, as in excusing jurors or setting hearings.
8. That the reporter or recorder should not discuss the merits of any case.
9. That the reporter or recorder should be careful not to leave the impression with anyone that s/he could or would 'talk to the judge' about a case or that s/he knows 'what the judge is going to do'.
10. That the reporter or recorder should not express an opinion as to how a case should be decided or what verdict a jury will return. In other words, s/he should not take sides in any proceeding.
11. When working in the court, the reporter or recorder should not permit anyone to dictate anything into the record out of the judge's presence or without the judge's knowledge.
12. That the reporter or recorder should never improperly interpose himself or herself between the judge or others.
13. That the reporter or recorder must not neglect the work of the court in order to perform outside work.
14. If the reporter or recorder is an attorney, she or he is not to practice law in the court served as an official court reporter or official court recorder.
15. That the court reporter or recorder maintain notes and records, stenographic tapes, or discs in accordance with law and the Michigan Trial Court Case File Management Standards.
18. That if the reporter's or recorder's employment is terminated, she or he will promptly transcribe and deliver all notes, records, and completed transcripts as requested.

As an officer of the court, the reporter or recorder should always recognize that an independent and honorable court is indispensable to justice in our system. The judicial system is for the benefit of the litigant and public, not the court or its staff.¹ As a possessor of this manual, you are either a part of, or about to become a part of, the justice system. May you serve with honor and distinction.

¹Code of Judicial Conduct, Canon 1.

B. Guidelines for Professional Practice

Common sense, professional courtesy, statutes and court rules should guide reporters and recorders in applying these guidelines.

In making the record the reporter or recorder should:

1. Accept only those assignments when their level of competence will result in the preparation of an accurate transcript. One should remove himself or herself from an assignment when one believes their abilities are inadequate, recommending or assigning another person if such person has the competence required for such assignment.
2. Prepare the record in accordance with transcript preparation guidelines established by statute, court rule, local custom and usage and this manual.
3. Notify, whenever possible, the parties engaging the reporter or recorder if a substitute reporter or recorder will be assigned.
4. Make timely delivery of transcript, meet promised delivery dates and make notification of delays.
5. Strive to become and remain proficient in your professional skills.
6. Keep abreast of current literature, technological advances and developments, and participate in continuing-education programs and professional organizations.
7. Cooperate with the bench and bar for improvement of the administration of justice.
8. Cooperate with qualified legal assistance organizations providing free legal services to the indigent as part of a commitment to the principle that legal services should be available to all. Such participation should be in accordance with the basic tenets of the profession: impartiality, competence and integrity.

C. Guidelines for Professional Ethics

A reporter or recorder shall:

1. Be fair and impartial toward each participant in all aspects of proceedings and always offer to provide comparable services to all parties in a proceeding.
2. Be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the reporter or recorder shall disclose that conflict or potential conflict.

3. Guard against not only the fact but the appearance of impropriety.
4. Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the reporter or recorder.
5. Be truthful and accurate when making public statements or when advertising qualifications or services provided.
6. Determine fees independently, except when established by statute or court order, entering into no unlawful agreements with anyone.
7. Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, witnesses, insurance companies or any other persons or entities associated with a litigation, or to the representatives or agents of any of the foregoing, except for nominal items that do not exceed \$25.00 per transaction or \$100 in the aggregate per recipient each year.
8. Avoid being identified with controversies that would reflect negatively on the justice system or the reporting/recording profession.
9. Maintain a sincere and impelling interest in and support of the reporting/recording profession.
10. Abide by the Constitution and the laws of the United States and the State of Michigan.

Source Material:

The National Court Reporters Association Code of Professional Ethics
National Stenomask Verbatim Reporters Association Member Handbook
Code of Judicial Conduct, Canon 3
The State Trial Judge's Book
MCL 600.1490; MSA 27A.1490

1-02 GENERAL INFORMATION

This chapter applies primarily to court employed reporters and recorders; however, all reporters, recorders, and operators are subject to the statutory and court rule requirements for certification and for producing transcripts and maintaining exhibits. Statutory requirements for freelance reporters/recorders and court reporting firms are outlined in Section 8-05.

A. Authority

1. Circuit Court

Each circuit court in this state shall have as many court reporters or certified court recorders as it has judges. [MCL 600.1101]

2. Probate Court

The probate judge or chief probate judge of any county or probate court district may appoint, and in counties having a population of 50,000 or more shall appoint, 1 or more official court reporters or certified recorders of the probate court. [MCL 600.835(1)]

3. District Court

There shall be not less than 1 district court certified court recorder or court reporter for each judge of the district court. [MCL 600.8601]

Under Supreme Court rule, the chief or only judge of the district may appoint additional certified recorders and reporters. [MCL 600.8602(2)]

B. Appointment

1. Generally

Chief judges, collectively, are the employers of all the official reporters and recorders in this state. The authority and responsibility to "supervise the performance of all court personnel, with authority to hire, discipline, or discharge such personnel, with the exception of a judge's secretary and law clerk, if any" is vested in the chief judge (or single judge) by the provisions of MCR 8.110(C)(3)(d).

2. Circuit Court

According to statute, every reporter or recorder in the circuit court shall be appointed by the governor after having first been recommended by the judge or judges of the court to which s/he is appointed and s/he is an officer of that court. [MCL 600.1104] However, a governor has not appointed a court reporter or recorder since 1990.

Instead, the court appoints court reporters and recorders in accordance with MCR 8.110(C)(3)(d).

3. Probate Court

The probate judge or chief probate judge of any county or probate court district appoints official court reporters and certified court recorders of the probate court. [MCL 600.835(1)]

4. District Court

Each judge of the district court shall appoint his or her own reporter or recorder. [MCL 600.8602(1)]

The Court of Appeals has held that a district court judge has the right and the responsibility of selecting a court recorder at the beginning of the judge's tenure in office under MCL 600.8601 et seq. The court expressly declined to consider the subsequent removal of the court recorder by the judge who appointed him or her. [*Irons v 61st District Court Employees*, 139 Mich App 313 (1984)]

C. Qualifications

Only reporters or recorders certified under MCR 8.108 may record or prepare transcripts at proceedings held in Michigan courts or of depositions taken in Michigan. [MCR 8.108(G)] If a reporter or recorder will be swearing in witnesses, he or she must be a notary. [MCR 2.304]

D. Term of Office

1. Circuit Court

Every reporter or recorder shall hold office at the pleasure of the governor unless suspended for incompetency or misconduct, by the court to which s/he is appointed. In the case of a suspension, the reporter or recorder shall cease to hold the office of reporter or recorder unless by order of the court his or her suspension is rescinded. If the suspension is not rescinded within 30 days of the order of suspension, the office shall become vacant.

E. Oath of Office

1. Circuit Court

Before entering upon the duties of his or her office, the court reporter or recorder shall take and subscribe the constitutional oath of office which shall be filed in the office of the secretary of state. [MCL 600.1104]

2. Probate Court

Upon appointment, probate court reporters and recorders shall take and subscribe the constitutional oath of office which shall be filed with the court clerk. [MCL 600.835(1)]

F. Management of Court Reporter/Recorder Services

The chief or only judge of the court is charged with overall administrative responsibility for the employees of the court. This responsibility extends to effective management of the court's shorthand reporters or certified electronic recorders. The court should consider adopting written policies covering the following areas:

1. Transcript Production/Exhibits

a. Responsibility for Supervision of Court Reporters/Recorders

It is primarily the responsibility of every trial judge to make certain that the court reporter/recorder timely prepares and files transcripts and maintains exhibits. Ultimately, it is the responsibility of the chief judge pursuant to MCR 8.110 to make certain that trial judges and court reporters or recorders comply with the requirements for preparing and filing transcripts and maintaining and filing exhibits.

b. Responsibility of Court Reporter/Recorder

The court reporter's/recorder's responsibility for preparing and furnishing the transcript is set forth in MCR 8.108.

c. Priority of Transcript Production/Exhibits

Transcripts should be prepared in order of being ordered. Transcripts should be filed within the time limits prescribed by the Michigan Court Rules. [MCR 7.101(F) and MCR 7.210(B)] In the rare case in which the time limit cannot be met, the reporter or recorder shall file a motion for an extension of time in the appellate court. A copy of any motion for extension of time shall be provided to the chief judge and the court administrator. (see SCAO Approved form, MC 503)

d. Show Causes

If a reporter/recorder is ordered by an appellate court to show cause why s/he should not be held in contempt of court for failing to file transcripts on a timely basis, the reporter/recorder shall immediately provide the chief judge and court administrator with a copy of the order.

As a matter of policy, a warning letter will be sent to any court reporter or recorder who has three show cause orders issued by the Court of Appeals within one calendar year. The letter shall include notification that the Board is instituting time management monitoring of that reporter/recorder and requires the reporter or recorder to provide a written explanation. Failure to bring all matters current and to respond to this warning may result in a formal hearing to impose sanctions up to and including revocation of certification.

e. Pending Transcript Report

Reporters and recorders should be required to file a monthly pending transcript report with the chief judge or court administrator. This report should contain at least the following information:

- 1) name of case;
- 2) file number;
- 3) date ordered;
- 4) date reporter's certificate was filed;
- 5) due date;
- 6) estimated length of transcript;
- 7) "type" of case;
- 8) estimated completion date; and
- 9) show cause date (if applicable).

2. Suppressed Transcripts

"There appears to be no statute, court rule, or case law that sets forth the procedure to be followed with respect to the preparation and filing of a transcript of a closed hearing. As a practical matter, the best procedure for the judge is to identify on the record at the beginning and end of the record, the portion of the transcript that is to be suppressed. The suppressed transcripts should not be filed with the other transcripts. Rather, it should be sent directly to the appellate court with a letter of explanation. A copy of the letter should be maintained in the court reporter's or recorder's records. (see also Section 8-03, page 8-03-01)" [quote from Michigan Court Administration Reference Guide, Section 4-24, page 4-24-04]

3. Exhibit Maintenance

Exhibit maintenance is governed by MCR 2.518 and the Michigan Trial Court Case File Management Standards, Component 20, pages 30 and 31. As a general rule, exhibits are maintained by the court reporter during the trial. At the conclusion of the trial, the judge will either require the exhibits to be retained by the court reporter until the conclusion of the time period for taking an appeal of right or returned to attorneys who offered the exhibits into evidence. If an appeal is taken, the court reporter or recorder should either file the exhibits with the clerk of the court so that the clerk can comply with MCR 7.210(C) or file the exhibits with the appellate court.

4. Equipment and Supplies

The court may supply certain basic supplies and equipment to each reporter or recorder. Examples include: transcript paper, stenograph paper, transcript covers, ink, ribbons, exhibit stickers, miscellaneous office supplies, typewriter, dictating machine, and cassettes.

1-03 RECORD MAINTENANCE

A. Records of the Court Reporter or Recorder

The court reporter or recorder who takes the testimony on the trial or the hearing of any case shall prefix the record of the testimony of each witness with the full name of the witness and the date and time the testimony was taken. At the conclusion of the trial of the case the reporter or recorder shall secure all of the records and properly entitle them on the outside, and shall safely keep them in his/her office.

B. Transfer of Records to Clerk of Court

If a court reporter or recorder dies, resigns, is removed from office, or leaves the state, his/her records in each case must be transferred to the clerk of the court in which the case was tried. The clerk shall safely keep the records subject to the direction of the court. The records are a part of the record of each case and are subject to inspection in the same manner as other records. On order of the court, a transcript may be made from the records and filed as a part of the record in the case. [MCR 8.108(D) and Michigan Trial Court Case File Management Standards, Component 11, pages 14 through 16]

The clerk of the court shall safely keep the records subject to the direction of the court. The records are part of the record of each case and are subject to inspection in the same manner as other records. [MCR 8.108(D) and Michigan Trial Court Case File Management Standards, Component 23, page 37]

C. Court to Retain Control Over Records of Reporters or Recorders

The clerk of the court shall safely keep the records subject to the direction of the court. The records are part of the record of each case and are subject to inspection in the same manner as other records. [MCR 8.108(D) and Michigan Trial Court Case File Management Standards, Component 23, page 37]

The court shall retain control over the records relating to any proceedings held in that court including those of court reporters and recorders who are not employed by the court. [Michigan Trial Court Case File Management Standards, Component 23, page 37]

D. Handling Non-Public Records

When a case becomes non-public pursuant to one of the statutes listed below, all materials related to that case must also be treated as non-public, including court reporter/recorder notes, recordings, transcripts, and any other material which may be kept in a separate location from the case file. Before making materials available to the public, court staff should check the court's file to determine its status relating to public access.

Although there is no specific statutory or rule-based direction for one court to make confidential a record or information which has been made confidential in another court, ordering such confidentiality in the other court would, in many cases, appear to be appropriate. An example is a district court case bound-over to circuit court where the file becomes non-public. Notification of the circuit court non-public record status would facilitate restriction of access to the record in the district court.

For details about the types of records and documents that are non-public, confidential, or have limited access, see the chart of Nonpublic and Limited Access Court Records at: http://courts.michigan.gov/scao/resources/standards/cf_chart.pdf.

[See also Case File Management Standards and Michigan Court Administration Reference Guide, Section 8-04, Maintaining Files/Records, page 8-04-01 and 8-04-02 for more details]